

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

DECLARATION

ARIENNE IRVING,

08-CR-640(JG)

Defendant.

FILED ELECTRONICALLY

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STATE OF NEW YORK)
COUNTY OF NEW YORK)
EASTERN DISTRICT OF NEW YORK)

ss :

JAVIER A SOLANO, Esq., pursuant to Title 28, United States Code, §1746,
hereby declares under the penalties of perjury:

1. I am counsel for the defendant ARIENNE IRVING, and make this declaration in support of the various forms of relief, as set forth in the annexed Notice of Motion.
2. The statements asserted as facts are based upon an examination of the trial record and the indictment. All matters about which your deponent lacks personal knowledge is asserted herein upon information and belief.
3. ARIENNE IRVING was convicted of counts one, three, five, twelve and thirteen of the instant Superceding Indictment after a trial by jury before this Court, of conspiracy to commit witness tampering; two counts of attempted witness tampering; importation of eavesdropping equipment and possession of eavesdropping equipment.
4. The first count of which the defendant was convicted charged the defendant, ARIENNE IRVING with Conspiracy to Obstruct Justice by corruptly persuading other persons, with intent to (a) influence and prevent the testimony of persons in an official proceeding, to wit: United States v. Shaheed Khan, 06-CR-255 (DLI) and (b) cause and induce persons to withhold

testimony from an official proceeding, to wit: the trial in United States v. Shaheed Khan, 06-CR-255 (DLI) in violation of Title 18, United States Code Sections 1512 (b)(1) and 1512 (b)(2)(a).

5. The second count of which the defendant was convicted charged the defendant, ARIENNE IRVING, together with others, with Attempted Witness Tampering, by knowingly and intentionally attempting to intimidate, threaten or corruptly persuade another person, to wit: David Clarke, with the intent to (a) influence and prevent the testimony of David Clarke in an official proceeding, to wit: United States v. Shaheed Khan, 06-CR-255 (DLI) and (b) cause and induce David Clarke to withhold testimony from an official proceeding, to wit: the trial in United States v. Shaheed Khan, 06-CR-255 (DLI) in violation of Title 18, United States Code Sections 1512 (b)(1) and 1512 (b)(2)(a).

6. The third count of which the defendant was convicted charged the defendant, ARIENNE IRVING, together with others, with Attempted Witness Tampering, by knowingly and intentionally attempting to intimidate, threaten or corruptly persuade another person, to wit: Vijai Jainarine (aka "Son"), with the intent to (a) influence and prevent the testimony of Vijai Jainarine in an official proceeding, to wit: United States v. Shaheed Khan, 06-CR-255 (DLI) and (b) cause and induce Vijai Jainarine to withhold testimony from an official proceeding, to wit: the trial in United States v. Shaheed Khan, 06-CR-255 (DLI) in violation of Title 18, United States Code Sections 1512 (b)(1) and 1512 (b)(2)(a).

7. The fourth count of which the defendant was convicted charged the defendant, ARIENNE IRVING, together with others, with Importation of Eavesdropping Equipment, by knowingly and intentionally sending through the mail and foreign commerce electronic devices, knowing and having reason to know that the design of such devices rendered them primarily

useful for the purpose of surreptitious interception of wire, oral and electronic communications, in violation of Title 18, United States Code Sections 2512 (1)(a) and 2512 (2).

8. The fifth count of which the defendant was convicted charged the defendant, ARIENNE IRVING, together with others, with Possession of Eavesdropping Equipment, by knowingly and intentionally possessing electronic devices, knowing and having reason to know that the design of such devices rendered them primarily useful for the purpose of surreptitious interception of wire, oral and electronic communications and that the devices had been sent through the mail and foreign commerce, in violation of Title 18, United States Code Sections 2512 (1)(a) and 2512 (2).

9. By way of the instant motion, ARIENNE IRVING now moves this Court for a judgment of acquittal, pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure or, in the alternative, an Order granting a new trial, pursuant to Rule 33 of the Federal Rules of Criminal Procedure, on the following grounds:

(a) the evidence adduced at trial was insufficient to support the count of Conspiracy to Obstruct Justice charged in the indictment with respect to the element of “membership,” in violation of Title 18, United States Code Sections 1512 (b)(1) and 1512 (b)(2)(a);

(b) the evidence adduced at trial was insufficient to support the count of Attempting to Tamper with David Clarke charged in the indictment with respect to the elements of “knowing” and indictment with respect to the element of “membership,” in violation of Title 18, United States Code Sections 1512 (b)(1) and 1512 (b)(2)(a);

(c) the evidence adduced at trial was insufficient to support the count of Attempting to Tamper with Vijai Jainarine charged in the indictment with respect to the elements of “knowing” and “intentionally” in violation of Title 18, United States Code Sections 1512 (b)(1) and 1512 (b)(2)(a);

(d) the evidence adduced at trial was insufficient to support the count of Importation of Eavesdropping Equipment charged in the indictment that with respect to the element of “device” in violation of Title 18, United States Code Sections 2512 (1)(a) and 2512 (2); and

(e) the evidence adduced at trial was insufficient to support the count of Possession of Eavesdropping Equipment charged in the indictment that with respect to the elements of “device” and “dominion and control” in violation of Title 18, United States Code Sections 2512 (1)(a) and 2512 (2).

10. ARIENNE IRVING incorporates all of the arguments contained in the Memorandum of law, as annexed hereto as Exhibit “A”, as if set forth fully herein.

WHEREFORE, your declarant prays for an Order granting the relief requested in the Notice of Motion, or in the alternative a hearing to resolve the issues raised therein and for such other and further relief as to this Court may deem just and proper.

Dated: October 22, 2009
New York, New York

Very truly yours,

/s/
Javier A. Solano, Esq.
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